

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MILLARD J. NEELY,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:07-CV-1344-D
VS.	§	
	§	
KIRAM KHURANA, et al.,	§	
	§	
Defendants.	§	

**ORDER**

After making an independent review of the pleadings, files, and records in this case, and the March 20, 2009 findings, conclusions, and recommendations of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.

Accordingly, the court grants defendants' January 21, 2009 motion for summary judgment. Defendants' December 3, 2008 motion to dismiss is denied without prejudice as moot. Plaintiff's January 6, 2009 motion to quash, February 10, 2009 motion for extension of time to answer defendants' motions for summary judgment, February 24, 2009 motion for interrogatories, and March 10, 2009 motion for hearing are denied.


After the magistrate judge filed her findings, conclusions, and recommendations, plaintiff filed a March 27, 2009 motion for summary judgment. To the extent plaintiff seeks summary judgment in his favor on a claim on which he will have the burden of proof, he "must establish 'beyond peradventure all of the essential elements of the claim[.]'" *Bank One, Tex., N.A. v. Prudential Ins. Co. of Am.*, 878 F. Supp. 943, 962 (N.D. Tex. 1995) (Fitzwater, J.) (quoting *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986)). The court has noted that the "beyond

peradventure” standard is “heavy.” *See, e.g., Cont’l Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, 2007 WL 2403656, at \*10 (N.D. Tex. Aug. 23, 2007) (Fitzwater, J.). Plaintiff has not met this burden. To the extent plaintiff relies on the evidence submitted in support of his own motion to oppose defendants’ motion, the evidence is submitted too late under the local civil rules of this court, and, for the reasons set out in the magistrate judge’s findings, conclusions, and recommendations, plaintiff is not entitled relief under Fed. R. Civ. P. 56(f) to file a late response.

This suit is dismissed with prejudice by judgment filed today.

**SO ORDERED.**

June 5, 2009.

  
SIDNEY A. FITZWATER  
CHIEF JUDGE